

MEE Question 5

A defendant was charged under state law with felony theft (Class D) and felony residential burglary (Class C). The indictment alleged that the defendant entered his neighbors' home without their consent and stole a diamond ring worth at least \$2,500.

Defense counsel filed a pretrial motion to dismiss the charges on the ground that prosecuting the defendant for both burglary and theft would constitute double jeopardy. The trial court denied the motion, and the defendant was prosecuted for both crimes. The only evidence of the ring's value offered at the defendant's jury trial was the owner's testimony that she had purchased the ring two years earlier for \$3,000.

At trial, the judge issued the following jury instruction on the burglary charge prior to deliberations:

If, after consideration of all the evidence presented by the prosecution and defense, you find beyond a reasonable doubt that the defendant entered the dwelling without the owners' consent, you may presume that the defendant entered with the intent to commit a felony therein.

The jury found the defendant guilty of both offenses.

At the defendant's sentencing hearing, an expert witness called by the prosecutor testified that the diamond ring was worth between \$7,000 and \$8,000. Over defense objection, the judge concluded, by a preponderance of the evidence, that the value of the stolen ring exceeded \$5,000. The judge sentenced the defendant to four years' incarceration on the theft conviction. On the burglary conviction, the defendant received a consecutive sentence of seven years' incarceration.

In this state, residential burglary is defined as "entry into the dwelling of another, without the consent of the lawful resident, with the intent to commit a felony therein." Residential burglary is a Class C felony for which the minimum sentence is five years and the maximum sentence is ten years of incarceration.

In this state, theft is defined as "taking and carrying away the property of another with the intent to permanently deprive the owner of possession." Theft is a Class D felony if the value of the item(s) taken is between \$2,500 and \$10,000. The sentence for a Class D felony theft is determined by the value of the items taken. If the value is between \$2,500 and \$5,000, the maximum sentence is three years' incarceration. If the value of the items exceeds \$5,000, the maximum sentence is five years' incarceration.

This state affords a criminal defendant no greater rights than those mandated by the United States Constitution.

1. Did the trial court err when it denied the defendant's pretrial motion to dismiss on double jeopardy grounds? Explain.
2. Did the trial court err in its instruction to the jury on the burglary charge? Explain.
3. Did the trial court err when it sentenced the defendant to an additional year of incarceration on the theft conviction based on the expert's testimony? Explain.

5) Please type your answer to MEE 5 below

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When finished with this question, click À to advance to the next question.

(Essay)

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===== Start of Answer #5 (890 words) =====

1. No, the trial court did not err when it denied the defendant's pretrial motion to dismiss on double jeopardy grounds.

At issue is whether conviction for burglary and theft (larceny) violates the constitutional prohibition against double jeopardy. Double jeopardy involves a second prosecution or conviction of a defendant for the same offense arising from the same facts or conduct, which the Constitution prohibits. There are exceptions such as the separate sovereigns rule that allows subsequent prosecutions for the same criminal offense, but a conviction for an offense on the same facts and conduct bars additional convictions of the same offense or any lesser included offense based on the same facts and conduct.

Generally, theft and burglary are considered separate offenses and neither is considered to be a lesser included offense of the other (unlike robbery and theft). The specific test for whether a conviction for two separate offenses triggers double jeopardy is the Blockburger Test. Under this test, a criminal defendant cannot be convicted for two different offenses arising from the same conduct and facts unless the two offenses charged each have one separate, independent element not contained in the other charge. Here, the jurisdiction's statutory definitions of the offenses each contain an

independent element that is not included in the other offense. Burglary is defined as (1) entering into the dwelling of another, (2) without consent, and (3) with an intent to commit a felony therein. Theft is defined as (1) taking and carrying away (2) the property of another with (3) the intent to permanently deprive the owner of possession. The statutory charges indicate that each offense contains an independent element that is not contained in the other offense. Consequently, the Double Jeopardy clause does not bar the defendant from being convicted for both theft and burglary even though the offenses would be based on the same conduct and facts.

2. Yes, the trial court erred in its instruction to the jury on the burglary charge because it directed the jury to presume an element of the offense and violated the defendant's constitutional rights, which require the prosecution to prove every element of a crime beyond a reasonable doubt

At issue is whether the judge's instructions violated the constitution by instructing the jury to presume the defendant entered with intent to commit a felony therein if the jury finds that the defendant entered without the owner's consent. The constitution provides that a person should not be convicted unless the prosecution meets the burden of proving there is no reasonable doubt. The Federal Rules of Evidence reflect this constitutional requirement with the specific rules that a judge should not shift a burden of disproving an element of an offense or negating the requirement that the prosecution prove each element of an offense beyond a reasonable doubt. Here, the judge's instructions are a clear violation of the defendant's constitutional rights because the instructions allow the jury to presume one element of the offense (intent to commit a

felony therein) if it finds a separate element of the offense was proven beyond a reasonable doubt. Appellate courts would consider this to not be a harmless error and would be a more than adequate ground to reverse the conviction.

3. Yes, the trial court erred when it sentenced a defendant to an additional year of incarceration on the theft conviction based on the experts testimony.

At issue is whether a federal district court judge can increase a defendant's sentence after hearing additional evidence not presented to a jury on a statutory element such as increase a defendant's conviction from a misdemeanor to a felony offense based on a statutory element of the offense that must be proven and determined by a jury.

Generally, federal judges may consider information not presented at trial when considering the appropriate sentence to impose on a defendant. Judges may consider personal characteristics of the defendant, behavior between indictment and conviction, family factors and hearsay evidence. A judge has wide discretion to consider this evidence when deciding to impose a sentence that is adequate but not more than necessary and based on the Sentencing Reform Act's statutory factors and considering whether a variance or departure is needed.

Here, however, the judge heard evidence that bore on a statutory element on the crime and needed to be proven beyond a reasonable doubt at trial. The jurisdiction's statute provides that a Class D offense of theft is only a misdemeanor if the value is proven to be between \$2,500 and \$5,000 and a felony if the value of the item exceeds \$5,000. The only evidence presented at trial was that the owner testified she had

bought the ring for \$3,000. While the prosecution could have presented evidence from the expert testimony at trial to prove that the value of the ring was \$5,000 and the jury could have considered whether that was proven beyond a reasonable doubt or the judge could have considered evidence warranting an upward departure to impose a greater sentence, the judge cannot usurp the jury's role as fact finder of a statutory element of the offense and heighten the offense convicted from a misdemeanor to an offense. Because it appears that the judge imposed an additional year of incarceration by finding that the defendant should have been convicted of felony theft, the judge erred.

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===== End of Answer #5 =====